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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF TULARE
10

11 WESLEY J. HENSLEY,
12 Petitioner,

13 vs.

14 CITY OF TULARE,
15 Respondent.
16

Case No. 273730

DECLARATION OF JOHN
McGINNESS

17 I, John McGinness, declare:

18 1. I hold a Bachelor of Arts Degree in Criminal Justice with a minor in Public
19 Administration from California State University, Long Beach.

20 2. I also hold a Master of Science Degree in Emergency Services Administration from
21 California State University, Long Beach.

22 3. I am a graduate of the West Point Leadership Institute.

23 4. I was employed by the Sacramento County Sheriff's Department for 31 years.
24 During my 31 years of service I was a training officer, team leader, homicide detective, CSI
25 investigator, and department spokesman.

26 5. I was appointed undersheriff of Sacramento County in March of 2001.

27 6. I was elected as the Sacramento County Sheriff in 2006.
28

DECLARATION OF JOHN McGINNESS

1 7. On January 19, 2018, I entered into a contract with the City of Tulare to conduct an
2 investigation into certain allegations made against former Tulare Police Chief Wes Hensley, who
3 had been place on administrative leave on September 27, 2017.

4 8. I have reviewed pages 97 through 111, and page 128 of the deposition of former
5 Tulare City Manager Joe Carlini, attached hereto as Exhibit 1.

6 9. In his testimony, Mr. Carlini testified that *prior* to his termination of Chief Hensley on
7 March 20, 2018, he had a telephone conversation with me which caused him to lose confidence
8 in Chief Hensley. This telephone conversation was summarized as follows:

9 “Q. Your loss of confidence, as I understand your testimony today -- and I want
10 you to be real careful about this. Your loss of confidence on March 20 is
11 completely based upon a conversation you had with John McGinness on
12 March 20 in which he told you four things. Those four things being: The chief
13 said the meeting in the library didn't happen, that the chief said that you
initiated the investigation into the credit card charge, there was a discharge
of a firearm that you were never told about, and there was a sexual
harassment claim that you thought the discipline was rather light on. Right?

14 A. Right.

15 Q. Other than that, there was nothing that caused you to issue the notice of
termination, correct?

16 A. Correct.” [Carlini deposition, 106:11-25]

17 10. Although I had a telephone conversation with Mr. Carlini *after* he terminated Chief
18 Hensley on March 20, none of the issues set forth in the above-referenced testimony were
19 discussed.

20 11. During our March 20 telephone conversation, which occurred after 4:24 p.m., Mr.
21 Carlini told me that he had already terminated Chief Hensley.

22 12. I was surprised that Mr. Carlini had taken this action as I had previously advised the
23 City Attorney, Heather Phillips, that based upon my investigation firing Chief Hensley for cause
24 would be indefensible.

25 13. During our telephone conversation of March 20, Mr. Carlini made it clear to me that
26 he had terminated Chief Hensley because he perceived the termination as essential to his survival
27 as the Tulare City Manager.

1 14. The foregoing statements are within my personal knowledge and, if sworn as a
2 witness, I can testify competently thereto.

3 15. I declare under penalty of perjury under the laws of the State of California that
4 the foregoing is true and correct.

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8 Dated: December 6, 2018


JOHN MCGINNESS

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF TULARE

WESLEY J. HENSLEY,)	
)	
Petitioner,)	NO. 273730
)	
v.)	
)	
CITY OF TULARE,)	
)	
Respondent.)	
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Visalia, California
October 10, 2018

VIDEO DEPOSITION
OF
JOSEPH CARLINI

TAMARA L. MENDOZA SUMPTER,	EXHIBIT 1
C.S.R. 9993	

1 A. Well, I didn't want to make a determination
2 based on what I thought. I wanted somebody else to look
3 at the facts with the -- the meeting that we had in the
4 library, you know, the fact that I was not made aware
5 that there was any investigation done at Selma, and then
6 there were other issues that were -- that were identified
7 during the investigation period that had to do with the
8 police department.

9 Q. Well --

10 A. And there was also a non-confidence from -- from
11 the rubber-to-the-road guys, from the -- from the police
12 department themselves. I mean, it wasn't only my, you
13 know, no confidence. It was the police department's no
14 confidence.

15 Q. Yeah. We'll talk about that in a minute, but
16 let's talk about the first part of this.

17 You said you were awaiting the investigation.
18 Did you get -- did you get the investigation results?

19 A. I had the conversation with the -- the inves --
20 the investigator on the -- on that day.

21 Q. On March 20?

22 A. Yeah, that's when -- that's when I --

23 Q. That was John McGinness, correct?

24 A. Yes.

25 Q. What did John McGinness tell you on March 20

1 regarding the investigation? Everything you recall.

2 A. Well, he told me -- specifically to Wes, he told
3 me that as part of his investigation he was -- he was
4 made aware by Wes that the meeting in the -- the meeting
5 in the library never happened. This is what he told me.
6 The meeting in the library never happened; so, therefore,
7 everything I said about the library never happened. The
8 fact that I said, "We have nothing. We have nothing,"
9 that I had a conversation with a person that was on
10 speaker that said they have nothing, and then the fact
11 that he said -- and in addition to that, Wes had made him
12 aware that I initiated the investigation at the Cattlemen
13 Ranch.

14 At that point in time, you know, that's not --
15 that's not true. It's not true. I never invented -- I
16 never initiated the investigation, and if I did, then
17 why -- why wasn't something told to me on Friday? Why
18 wasn't something told to me on Sunday besides the mayor?
19 Why? Why?

20 Q. But you knew -- but you knew that Wes had
21 contended that you ordered the investigation long before
22 you talked to John McGinness on March 20. That had been
23 in the newspapers the prior October, five months earlier.
24 Those were headlines, Joe.

25 A. I'm telling you, I never initiated the

1 investigation.

2 Q. That's not the issue. You said part of the
3 reason that you lost confidence in him is because the
4 investigator told you on March 20 that Wes said that you
5 started the investigation --

6 A. Right.

7 Q. -- at Cattlemens.

8 A. Um-hmm. And I'm not going to trust what's in
9 the newspapers.

10 Q. So you were aware that Wes had made that
11 allegation through the newspapers, but you weren't going
12 to trust that. It was after McGinness confirmed it that
13 you decided that you had lost confidence; is that
14 correct?

15 A. I wanted to make sure that what -- because I
16 know that the statements in the newspapers don't
17 necessarily mean they're -- they're reality. They could
18 be skewered [sic]. So I wanted the investigator to tell
19 me what he uncovered. Once he told me what he uncovered,
20 now it's -- it's -- it's -- it's -- it's -- in my mind,
21 it's legal. He -- he -- he investigated this thing. He
22 was an outside party. He made me aware of what the
23 issues were, and at that point --

24 Q. Did you ask him what his findings were as to
25 whether or not the chief should be reinstated?

1 A. No, because I don't think it's his position to
2 make that determination.

3 Q. But you never asked, correct?

4 A. Nuh.

5 Q. Did you ask him if he thought that the chief had
6 properly been put on administrative leave?

7 A. No, I don't -- I don't think I've ever ask -- I
8 ever asked that question.

9 Q. Did you ask him to complete his report?

10 A. Yeah.

11 Q. Did he?

12 A. I was gone before that.

13 Q. But you asked him to complete the report?

14 A. Yeah. I mean, I want -- I wanted it, you know,
15 documented as opposed to verbally, but I would imagine
16 the guy told me the truth. I mean, why would he -- why
17 would he tell me something that wasn't accurate? I would
18 hope...

19 Q. What else do you recall him saying that caused
20 you to lose confidence in the chief?

21 A. That was pretty much it, I mean, in my mind.

22 Q. So just so I can be sure, there were two things
23 that Mr. McGinness said that caused you to lose
24 confidence in the chief: One is that the meeting in the
25 library never happened, and the other one is that the

1 chief told Investigator McGinness that you had basically
2 ordered the investigation into the Cattlemens incident,
3 correct?

4 A. Correct.

5 Q. Can't think of anything else?

6 A. There were other things as part of that
7 investigation because it -- it started to snowball, the
8 investigation itself. You know, I don't even know if you
9 know what the investigation -- you know, it started to
10 skewer itself.

11 Q. See, I -- here's what I want to do: I want to
12 try to stay nice and calm and kind of focused here.

13 So you said on March 20 that you had lost
14 confidence in the chief, and at this point in time the
15 City spent a boatload of money on a six-month
16 investigation into the chief, correct?

17 A. Uh-huh.

18 Q. He's been on administrative leave for six
19 months.

20 I find it extremely odd that right on the cusp
21 of getting the results, all of a sudden you pull the plug
22 and you fire the guy. I find that to be really odd, and
23 everybody that I've talked to finds it to be odd.

24 So my question is, you said you lost confidence
25 on the 20th. I'm trying to find out what happened

1 between September 27th when you put him on admin. leave
2 and March 20 when you fired him that caused you to lose
3 confidence. You've said you had a conversation with
4 McGinness, and McGinness told you two things, and those
5 caused you to lose confidence.

6 Did McGinness say anything else that caused you
7 to lose confidence in the chief, other than what you've
8 identified?

9 A. Yes. Actually, there was. There was -- there
10 was the fact that there was the -- the fact of the --
11 that the meeting in the -- in the library never happened,
12 that I initiated the investigation, and there were two
13 other issues that he was looking into that had to deal
14 with how -- how you -- how you discipline, how you deal
15 with issues that are -- are -- that have -- that have
16 happened in your organization, more specifically, a
17 discharge of a firearm in the police department and how
18 the chief handled -- it's not discrimination -- it's
19 almost like sexual misconduct with one of his -- of his
20 employees, with one of the police sergeants or
21 something.

22 Q. What did he say about the discharge of the
23 firearm?

24 A. He said he could find nothing in -- in --
25 anywhere that identified the fact that there was

1 disciplinary action when disciplinary action should have
2 happened based on their rules and regulations of
3 discharging a weapon in a police -- in a police building.
4 You know, you're not supposed to be cleaning your
5 weapon -- I mean, there's -- I don't know what it's
6 called, POV or something. There's something that he
7 identified. He's more familiar with this, and you can
8 have that conversation with him, but he identified that
9 there was specific rules that have to happen with an
10 investigation, with a disciplinary action and everything
11 when a -- when a firearm is discharged in a building.

12 Q. When -- when did this event take place?

13 A. I was never made aware of it --

14 Q. So --

15 A. -- while I was an interim.

16 Q. So --

17 THE REPORTER: I'm sorry. I didn't hear your
18 answer.

19 A. While I was an interim, I was never -- it
20 happened while I was an interim, and I was never made
21 aware of the fact that there was a discharge in the
22 police department. Tell me how that shouldn't happen.

23 Q. All right. So -- so you're -- you've lost
24 confidence in the chief now because there was a discharge
25 of a firearm in the police department while you were the

1 interim city manager and you were never told about it,
2 correct?

3 A. Right.

4 Q. Okay. That's the third reason.

5 A. Right.

6 Q. You identified a fourth. The fourth reason, you
7 vaguely were talking about sergeant, sexual harassment,
8 or something. Give me some detail.

9 A. Well, there was -- there was a sexual harassment
10 claim from a sergeant in his -- in -- in PD that
11 specifically identified one of the -- the police chief's
12 management staff, and, you know...

13 Q. And?

14 A. I -- I -- there was -- there was a form of -- of
15 discipline -- I guess it was a verbal reprimand -- of
16 the -- of the person that was part of the investigation,
17 I guess, or part of the discussion, and then after that,
18 because the discipline was rather light when it comes to,
19 you know, somebody claiming sexual harassment, because it
20 was -- it was light and it didn't require -- it didn't do
21 any written reprimand or verbal counseling -- I mean, it
22 was a verbal counseling -- didn't do a written reprimand,
23 didn't do days off, the individual again brought this
24 individual -- brought the female police officer into a
25 room alone, and again, now she files another sexual

1 harassment claim that was looked at.

2 Q. So the discipline --

3 A. So that's -- so those are the four.

4 Q. The -- the -- the words "rather light," were

5 those used by Mr. McGinness?

6 A. Yes.

7 Q. Okay. So Mr. McGinness told you there was a

8 sexual harassment complaint involving, I take it, a

9 female sergeant, correct?

10 A. Yes.

11 Q. And that the discipline in that instance was

12 rather light?

13 A. (Nods head.)

14 Q. So that was one of the four things --

15 A. Right.

16 Q. -- that caused you to lose confidence in the

17 chief.

18 A. There you go.

19 Q. And this was based on a conversation you had

20 with Mr. McGinness on what date?

21 A. The same day.

22 Q. And was this by telephone?

23 A. Yes.

24 Q. Did someone ask you to call Mr. McGinness on

25 that date?

1 A. No.

2 Q. Why did you call Mr. McGinness on March 20?

3 A. Because I wanted to find out where we were.

4 I've -- I've been getting beat up in the council meetings
5 and by the public for months in regards to this issue and
6 this investigation. And, realistically, I wasn't part of
7 the investigation. I just wanted the final report.

8 Q. And I think you identified another issue that
9 arose that caused you to lose confidence in the chief,
10 again, between September 27 when he was placed on
11 administrative leave and March 20 when you terminated his
12 employment, and that was there was a loss of confidence
13 vote; is that correct?

14 A. From -- from the PD.

15 Q. Yeah. What was the vote, and what was the
16 specific question that was asked?

17 A. I think it was 56 out of 80. I think it was --
18 it was pretty significant in terms of the amount of
19 people that actually voted no confidence. I wasn't made
20 aware of that information. I mean, I just remember it
21 coming to the council because they identified it there.
22 The union president or somebody came to the podium and
23 talked to the council.

24 Q. When did that happen?

25 A. I don't remember.

1 Q. Happened a long time before March 20, didn't it?

2 A. It was -- I don't think it was that far away
3 from that, but, again, the investigation was going on. I
4 didn't want to make any decisions and make any -- you
5 know, anything -- I didn't want to make anything concrete
6 until I got information from --

7 Q. What was the specific question that was posed to
8 the police officers on that loss of -- or that no
9 confidence vote, as you described it? Wasn't that
10 something that was conducted by the union?

11 A. Yes, it was conducted by the union.

12 Q. Did you ever look at the question that was
13 asked?

14 A. No. You'd need to ask the union that.

15 Q. So, I mean, they could just get up and pretty
16 much say anything and you'd believe them?

17 A. No, I didn't base my -- I didn't base -- I
18 didn't base what I did on them. I based it on me.

19 Q. Well, let's --

20 A. I told you --

21 Q. Okay.

22 A. -- there were four issues.

23 Q. Okay. So loss of confidence wasn't one of the
24 factors that went into your decision to terminate the
25 chief. The four issues that --

1 A. No, you're wrong. Loss of confidence by me.

2 Q. Okay. Hold on. Hold on.

3 The loss of confidence as expressed by the
4 Tulare Police Officers' Union was not one of the factors.

5 A. No, I didn't take that -- you know, I --

6 Q. Okay.

7 A. I mean, you're always going to get that from --
8 from employees, I mean --

9 Q. Okay. So we can scratch that.

10 A. -- unfortunately.

11 Q. Your loss of confidence, as I understand your
12 testimony today -- and I want you to be real careful
13 about this. Your loss of confidence on March 20 is
14 completely based upon a conversation you had with John
15 McGinness on March 20 in which he told you four things.
16 Those four things being: The chief said the meeting in
17 the library didn't happen, that the chief said that you
18 initiated the investigation into the credit card charge,
19 there was a discharge of a firearm that you were never
20 told about, and there was a sexual harassment claim that
21 you thought the discipline was rather light on. Right?

22 A. Right.

23 Q. Other than that, there was nothing that caused
24 you to issue the notice of termination, correct?

25 A. Correct.

1 Q. Okay. Now, with that universe in mind,
2 something else happened that day, correct?
3 A. I have no clue.
4 Q. Weren't you fired that day?
5 A. Oh, yeah, yeah, I was fired.
6 Q. You didn't have a clue about that?
7 A. I tried to eliminate that out of my mind.
8 Q. Oh, okay.
9 A. That's unfortunate.
10 Q. So -- so -- so what time did you fire the chief;
11 do you remember?
12 A. Probably -- probably midday.
13 Q. Probably midday? Do you recall?
14 A. Oh, no. No. The -- the -- the -- the document
15 was generated. I signed it. We sent it electronic. We
16 sent it in an email.
17 Q. Did anyone pressure you into terminating the
18 chief before you were terminated later that evening at
19 the council?
20 A. No.
21 Q. Prior to firing the chief on March 20, did you
22 discuss your concerns about his ability to lead the
23 department with Carlton Jones?
24 A. No. I tried to keep them out of that. I mean,
25 you know, that's -- that's really not within their

1 responsibility.

2 Q. "No" is fine. The answer is no. That's it. We
3 don't need -- okay.

4 Did you discuss your concerns about his ability
5 to lead the department with Fred Ynclan?

6 A. No.

7 Q. Did you discuss it with Matt Machado?

8 A. No.

9 Q. Did you discuss it with now acting chief Barry
10 Jones?

11 A. No. The only time I talked to Barry Jones was
12 to -- when I put --

13 Q. The answer was "No."

14 A. No, no, no.

15 Q. That's sufficient.

16 Did you ever discuss your loss of confidence in
17 the chief's ability to lead the department with any other
18 sworn peace officer in the department?

19 A. No.

20 Q. Did you ever discuss your loss of confidence in
21 the chief with Roger Wilson?

22 A. I don't even know who Roger Wilson is.

23 Q. He's the union president.

24 A. No idea.

25 Q. I mean, the union attorney. Excuse me.

1 Did you ever discuss your loss of confidence
2 with Janice Avila?

3 A. I may have identified it to her because she's
4 HR. I may -- I probably identified it to her thinking,
5 you know, the fact that, you know, what is -- what's
6 being said is not correct. So Janice probably heard me
7 say that because she's HR.

8 Q. All right. And do you recall anything that you
9 specifically discussed with Janice?

10 A. Just those -- that -- that issue. You know,
11 there was a firearm that was discharged in that -- in the
12 police department. I was never made aware of it, and
13 there was no discipline from it because she had to look
14 at -- she had to look at the personnel issue.

15 Q. And you told her that?

16 A. Yeah.

17 Q. Okay. So you talked -- okay. So you discussed
18 with Janice Avila -- this would have been on March 20,
19 correct, because you made the decision on March 20? You
20 talked to John McGinness on March 20.

21 A. No, no. We talked about the firearm before that
22 with Janice Avila, and she never found anything in the
23 personnel records that the -- that there was any
24 investigation or discipline based on that firearm.

25 Q. I thought your testimony was the first you heard

1 about that was when John McGinness talked to you on the
2 20th.

3 A. No, I heard about it before, but, you know, John
4 McGinness was investigating it. How could I hear about
5 it on the 20th and John McGinness investigating it before
6 the 20th?

7 Q. Because --

8 A. That doesn't make sense.

9 Q. No, actually, it does make sense because John
10 McGinness was, as I understand it, reporting to you on
11 March 20 the results of his investigation.

12 A. But he had to get the information on the
13 discharge of the weapon before March 20th.

14 Q. Well, he didn't have to get it from you.

15 A. No.

16 Q. Did he get it from you?

17 A. He got it from Heather -- he got it from our
18 attorney.

19 Q. Oh, he got it from Heather?

20 A. Yeah.

21 Q. How do you know that?

22 A. Because she made me aware that as she was
23 speaking with the union, as she was working on some of
24 these issues with grievances, some of these things had
25 come up and that she made -- she has a very lengthy list

1 of what John McGinness was supposed to be investigating
2 and that she --

3 Q. Did you ever see that list?

4 A. Yeah.

5 Q. Did you help prepare that list?

6 A. No.

7 Q. So Heather Phillips --

8 A. I mean, I agreed with it though.

9 Q. Heather Phillips hires the investigator, and
10 then Heather Phillips feeds information to the
11 investigator, correct? But you're not doing that? This
12 is all being done by the city attorney, as you understand
13 it?

14 A. Yeah. I mean, she was the one that was talking
15 with the union. She was the one that was talking -- she
16 was the one that was getting the grievances.

17 Q. Why was she talking to the union?

18 A. Because she's the city attorney and the union --

19 Q. But she's talking to the union specifically
20 about the chief?

21 A. I think that she -- that's something that you
22 are going to have to ask her. I mean, I'm not sure.
23 All I know is there were several things that came out of
24 those meetings, whether it be the sexual harassment
25 issue, I mean --

1 fact that one of the police ch -- police staff,
2 management staff touched another male employee
3 physically. You know, we need to find out what that is.
4 Somebody need -- you know, we need to identify what's
5 going on there, you know, because there was -- there was
6 one issue with the sexual harassment on Rosa, and then
7 there was the second issue, which was that one of the --
8 one of the lieutenants were getting physical with their
9 people.

10 Q. But that wasn't one of the things that you
11 discussed on March the 20th; that was something you
12 discussed in your interview with McGinness sometime
13 earlier?

14 A. Interview, yes.

15 Q. Okay. Did you ever tell Mr. McGinness at any
16 time that you had been pressured to fire the chief?

17 A. No.

18 Q. Never told him that?

19 A. (Shakes head.)

20 Now, I need to be clear. I never -- he -- I
21 never told him I was being pressured to fire. I was
22 being pressured to complete the investigation.

23 Q. Who was pressuring you?

24 A. Everybody. Are you kidding me? Everybody.

25 Q. But you weren't involved in the investigation.